

# T H E K I N G;

A N D

*The Dean and Chapter of the Cathedral Church of  
the Holy Trinity, Dublin;*

U P O N

*A Writ of Error on a Judgment on a Writ of Mandamus  
out of the King's-Bench in Ireland, and Judgment for  
Quashing that Writ of Error by the King's-Bench at  
Westminster.*

*The Dean and Chapter's CASE.*

**T**H E said Dean and Chapter having, for the Reasons hereinafter mentioned, refused to admit *Robert Dowgate*, Clerk, to a Stall in the Choir, and a Place and Vote of the Chapter of the said Cathedral Church, to which he claimed a Right as Arch-Deacon of *Dublin*, a Writ of *Mandamus* issued out of the said Court of *King's-Bench in Ireland*, directed to the said Dean and Chapter, setting forth, ' That whereas the said *Robert Dowgate* was, by *William Arch-Bishop of Dublin*, &c. the true and undoubted Patron of the Arch-Deaconry of *Dublin*, duely collated, instituted, and inducted to the said Arch-Deaconry; And whereas all Arch-Deacons of *Dublin*, by Letters Patents of *King Henry VIII.* granted to the Dean and Chapter of the Cathedral Church of the *Holy Trinity, Dublin*, and by antient Custom hitherto used in the said Church, have enjoyed, and ought to enjoy, a Stall in the Choir, and a Vote and Place in all Chapter Acts of the said Church, according to the Honour and Prerogative of their Dignity; But that the said Dean and Chapter had unjustly denied, and do yet deny, to the said *Robert Dowgate*, not only a Stall in the Choir, but also a Vote and Place in the Chapter, in all Chapter Acts of the said Church, in Contempt of the King, and to the said *Robert Dowgate's* great Damage, &c. And therefore commanding the said Dean and Chapter, that immediately after the Receipt or Sight of the said Writ, they should receive and admit the said *Robert Dowgate* to the Stall of the Arch-Deacon of *Dublin*, in the Choir, and to a Vote and Place in the Chapter in all Chapter Acts of the said Church of the *Holy Trinity, Dublin*, or shew Cause to the contrary, &c.'

To which Writ the said Dean and Chapter made the following Return, *Viz.* ' That the said *King Henry VIII.* by his Letters Patent, under the Great Seal of *Ireland*, dated at *Dublin* the 10th of *May*, in the Thirty-third Year of his Reign, did give and grant to the Dean and Chapter of the said Cathedral Church of the *Holy Trinity, Dublin*, and their Successors (among other Things) that the said Dean and Chapter, and their Successors for Ever, might constitute and ordain Statutes and Ordinances for the good Government of the said Church, and abrogate and change the same, and make others in their Place, as by the said Letters Patent in Court produced, more fully appears; And that among the Statutes constituted by the said Dean and Chapter for the good Government of the said Church, it is ordained, That every



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every Person, who ought to have a Stall in the Choir, and a Vote and Place in the Chapter of the said Church, shall, before he is admitted to have such Stall in the Choir, and a Vote and Place in the Chapter of the said Church, take his Corporal Oath, before the said Dean and Chapter for the Time being, to yield Canonical Obedience to the Dean of the said Church for the Time being, and his Successors Canonically entering, and observe the Statutes and lawful Customs of the said Church and Chapter, and the Secrets of the said Chapter shall secret keep; And further, That the said *Robert Dowgate*, on the 29th of November, 1715. before the said Dean and Chapter, who were then in the Chapter-House in Chapter assembled, and were ready and willing to admit the said *Robert Dowgate* to the Stall of the Arch-Deacon of *Dublin*, in the Choir, and to a Vote and Place in the Chapter of the said Church, did refuse to take the said Oath before his Admission thereunto, although to take the same he was then and there required by the said Dean and Chapter, and doth yet refuse; For which Cause they the said Dean and Chapter did, and do refuse to admit the said *Robert Dowgate* to the Stall of the Arch-Deacon of *Dublin*, in the Choir, and to a Vote and Place in the Chapter of the said Cathedral Church.

Which Return being afterwards considered by the said Court of *King's-Bench* in *Ireland*, they gave Judgment, That the same was not sufficient to conclude the said *Robert Dowgate* from Aid and Remedy in this Behalf, and ordered a Writ of *Mandamus* to be directed to the Dean and Chapter for the immediate and peremptory admitting the said *Robert Dowgate* to the Stall of the Arch-Deaconry of *Dublin* in the Choir, and to a Vote and Place in the Chapter, in all Chapter Acts of the said Cathedral Church, &c.

Whereupon the said Dean and Chapter brought a Writ of Error returnable in the Court of *King's-Bench* at *Westminster*; where the said Dean and Chapter having assigned Errors, and *In nullo est Erratum* pleaded, Issue being joined thereon, the said Court of *King's Bench* at *Westminster*, were of Opinion, That a Writ of Error doth not lie upon a Judgment given on a Writ of *Mandamus*; and therefore gave Judgment, that the said Writ of Error should be quashed.

Upon which several Judgments of the Court of *King's-Bench* in *Ireland*, and the Court of *King's-Bench* at *Westminster*, this Writ of Error is brought before your Lordships; where the said Dean and Chapter have assigned the General Errors, and *In nullo est Erratum* is pleaded, and Issue is joined thereon; and the said Dean and Chapter are advised, and do humbly conceive, That the said several Judgments are Erroneous for the Reasons following, *Viz.*

FIRST.

As to the Judgment of the Court of *King's-Bench* in *Ireland*; For that the said Statute or Ordinance of the Dean and Chapter (mentioned in their Return to the said *Mandamus*) is a very reasonable Statute. It was made for the good Government of the said Church and Chapter, to enforce Canonical Obedience in the Church and Chapter; and the Oath required thereby is essentially necessary to be taken by every Member of the Chapter, before he be admitted to be one of the Body, in order to manifest and secure his Conformity to Discipline and Order. And it is the more reasonable, as being what is commonly practised by other Deans and Chapters, and Bodies Corporate, both Spiritual and Temporal; And the said Arch-Deacon, being contumacious to the said Ordinances, refusing to comply with so reasonable a Request as a Qualification, it was good Cause for the Dean and Chapter's Refusal to admit him to the Stall in the Choir, or Vote in the Chapter; and therefore the said Return ought to have been adjudged sufficient.

But



SECONDLY. But admitting the Return not sufficient, yet it is humbly conceived, That a Peremptory *Mandamus* ought not to have been awarded, because a *Mandamus* is not a proper Remedy in this Case.

The Design of granting a *Mandamus*, is to admit a Person to an Office, in order to enable him to bring his Action for the Profits and Privileges belonging to that Office, which he cannot do 'till he has been admitted; But in the present Case it appears, by the *Mandamus* itself, That Dr. *Dowgate* was duely collated, instituted, and inducted to the Arch-Deaconry of *Dublin*, and as such (if he has legally qualified himself) ought to enjoy a Stall in the Choir, and a Voice and Place in the Chapter, which being Privileges belonging to the Arch-Deaconry, to which he was intitled, he might bring an Action against any Person that disturbed him in the Enjoyment of them, as he might bring an Ejection for a House belonging to that Office.

THIRDLY. As to the Judgment of the Court of *King's-Bench* at *Westminster*; For that, as they humbly conceive, a Writ of Error lies upon a Judgment on a *Mandamus*, as well as on any other Judgment, since otherwise the Subjects would be deprived of the Benefit of an Appeal in Cases wherein their Liberties and Properties are very much concerned; and in no Cases more than by Erroneous Judgments on Writs of *Mandamus*, whereby, not only the *Estate, Real and Personal, and Office*, which every *Englishman* enjoys, may be much affected, but the *Liberties and Privileges* of every *City and Borough* in *Great Britain and Ireland* very highly concerned; And therefore the said Court ought not to have quashed the same, but to have given Judgment on the *Merits* of the *Return*.

For which, and divers other Reasons, the said Dean and Chapter humbly hope, That the said Judgments shall be severally Reversed, and they be otherwise relieved, in such Manner as to Your Lordships shall seem meet.

C. WEARG.  
FETTIPLACE NOTT.



CONDLY.

But admitting the Return not sufficient, yet it is hardly conceivable  
That a Person who ought not to have been awarded, because  
a Member is not a proper Member in this case.

The Design of granting a Member, is to admit a Person to an Office  
in order to enable him to bring in the Return for the Profit and Profit  
leges belonging to that Office, which he cannot do till he has been  
admitted; but in the present Case it is stated, by the Return, that  
That Dr. Dwyer was duly elected, and that he was admitted to the  
Arch Deaconry of Dublin, and that he was admitted to the  
Chapter, which being the case, the Return is sufficient to admit him  
to the Office, and that he is a proper Member in this case.

EDLY.

As to the Judgment of the Court of King's Bench, it is  
For that they thought it was a proper Member in this case, and  
that the Return was sufficient to admit him to the Office, and that  
he was a proper Member in this case, and that the Return was  
sufficient to admit him to the Office, and that he was a proper  
Member in this case, and that the Return was sufficient to admit  
him to the Office, and that he was a proper Member in this case.

# THE KING;

AND

The Dean and Chapter of the Cathedral Church of the Holy Trinity, Dublin.

The Dean and Chapter's CASE.

ON

A Writ of ERROR.

To be Heard on

the

Day of April, 1724.

*Judgment affirmed  
and sc. Cost*